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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 PHILADELPHIA INDEMNITY
8 INSURANCE COMPANY, a Pennsylvania
corporation, as subrogee of DH&G, LLC,

9 Plaintiff,

10 v.

11 HEWLETT-PACKARD COMPANY,

12 Defendant.

No. C19-138 RSM

MODEL STIPULATED
PROTECTIVE ORDER

13
14 1. PURPOSES AND LIMITATIONS

15 Discovery in this action is likely to involve production of confidential, proprietary, or
16 private information for which special protection may be warranted. Accordingly, the
17 parties hereby stipulate to and petition the court to enter the following Stipulated
18 Protective Order. The parties acknowledge that this agreement is consistent with LCR
19 26(c). It does not confer blanket protection on all disclosures or responses to discovery,
20 the protection it affords from public disclosure and use extends only to the limited
21 information or items that are entitled to confidential treatment under the applicable legal
22 principles, and it does not presumptively entitle parties to file confidential information
23 under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged: Contracts, correspondence, data, drawings, lists,
4 reports, specifications, and all other documents containing: (1) information about the
5 design, manufacture, or assembly of computer products and accessories; (2) financial,
6 marketing, pricing, and sales information; (3) customer information; (4) information about
7 suppliers and business partners; or (5) other trade secrets or proprietary information.

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential material
10 (as defined above), but also (1) any information copied or extracted from confidential
11 material; (2) all copies, excerpts, summaries, or compilations of confidential material; and
12 (3) any testimony, conversations, or presentations by parties or their counsel that might
13 reveal confidential material.

14 However, the protections conferred by this agreement do not cover information
15 that is in the public domain or becomes part of the public domain through trial or
16 otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that is
19 disclosed or produced by another party or by a non-party in connection with this case only
20 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
21 be disclosed only to the categories of persons and under the conditions described in this
22 agreement. Confidential material must be stored and maintained by a receiving party at
23 a location and in a secure manner that ensures that access is limited to the persons
24 authorized under this agreement.

1 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the designating party, a receiving party may
3 disclose any confidential material only to:

4 (a) the receiving party's counsel of record in this action, as well as
5 employees of counsel to whom it is reasonably necessary to disclose the information for
6 this litigation;

7 (b) the officers, directors, and employees (including in house counsel)
8 of the receiving party to whom disclosure is reasonably necessary for this litigation, unless
9 the parties agree that a particular document or material produced is for Attorney's Eyes
Only and is so designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary
11 for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
12 (Exhibit A);

13 (d) the court, court personnel, and court reporters and their staff;

14 (e) copy or imaging services retained by counsel to assist in the
15 duplication of confidential material, provided that counsel for the party retaining the copy
16 or imaging service instructs the service not to disclose any confidential material to third
parties and to immediately return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure
18 is reasonably necessary and who have signed the "Acknowledgment and Agreement to
19 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by
20 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 confidential material must be separately bound by the court reporter and may not be
disclosed to anyone except as permitted under this agreement;

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

1 4.3 Filing Confidential Material. Before filing confidential material or discussing
2 or referencing such material in court filings, the filing party shall confer with the
3 designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether
4 the designating party will remove the confidential designation, whether the document can
5 be redacted, or whether a motion to seal or stipulation and proposed order is warranted.
6 During the meet and confer process, the designating party must identify the basis for
7 sealing the specific confidential information at issue, and the filing party shall include this
8 basis in its motion to seal, along with any objection to sealing the information at issue.
9 Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
10 that will be applied when a party seeks permission from the court to file material under
11 seal. A party who seeks to maintain the confidentiality of its information must satisfy the
12 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to
13 seal. Failure to satisfy this requirement will result in the motion to seal being denied, in
14 accordance with the strong presumption of public access to the Court's files.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
17 party or non-party that designates information or items for protection under this
18 agreement must take care to limit any such designation to specific material that qualifies
19 under the appropriate standards. The designating party must designate for protection only
20 those parts of material, documents, items, or oral or written communications that qualify,
21 so that other portions of the material, documents, items, or communications for which
22 protection is not warranted are not swept unjustifiably within the ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that
are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
to unnecessarily encumber or delay the case development process or to impose

unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is

1 stored the word "CONFIDENTIAL." If only a portion or portions of the information or item
2 warrant protection, the producing party, to the extent practicable, shall identify the
3 protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
5 to designate qualified information or items does not, standing alone, waive the
6 designating party's right to secure protection under this agreement for such material.
7 Upon timely correction of a designation, the receiving party must make reasonable efforts
8 to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any party or non-party may challenge a designation
10 of confidentiality at any time. Unless a prompt challenge to a designating party's
11 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
12 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
13 party does not waive its right to challenge a confidentiality designation by electing not to
14 mount a challenge promptly after the original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any
16 dispute regarding confidential designations without court involvement. Any motion
17 regarding confidential designations or for a protective order must include a certification,
18 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
19 meet and confer conference with other affected parties in an effort to resolve the dispute
20 without court action. The certification must list the date, manner, and participants to the
21 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
22 conference.

23 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
intervention, the designating party may file and serve a motion to retain confidentiality
under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The

1 burden of persuasion in any such motion shall be on the designating party. Frivolous
2 challenges, and those made for an improper purpose (e.g., to harass or impose
3 unnecessary expenses and burdens on other parties) may expose the challenging party
4 to sanctions. All parties shall continue to maintain the material in question as confidential
5 until the court rules on the challenge.

6 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
7 **OTHER LITIGATION**

8 If a party is served with a subpoena or a court order issued in other litigation that
9 compels disclosure of any information or items designated in this action as
10 “CONFIDENTIAL,” that party must:

11 (a) promptly notify the designating party in writing and include a copy of
12 the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the subpoena or
15 order is subject to this agreement. Such notification shall include a copy of this agreement;
16 and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the designating party whose confidential material may be affected.

19 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
21 confidential material to any person or in any circumstance not authorized under this
22 agreement, the receiving party must immediately (a) notify in writing the designating party
23 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies
of the protected material, (c) inform the person or persons to whom unauthorized
disclosures were made of all the terms of this agreement, and (d) request that such

1 person or persons execute the "Acknowledgment and Agreement to Be Bound" that is
2 attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of
7 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
8 This provision is not intended to modify whatever procedure may be established in an e-
9 discovery order or agreement that provides for production without prior privilege review.
10 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set
forth herein.

11 10. NON-TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each
13 receiving party must delete or destroy all confidential material that was disclosed or
14 produced by another party or by a non-party in connection with this case, including all
copies, extracts and summaries thereof.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of
16 all documents filed with the court, trial, deposition, and hearing transcripts,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
18 consultant and expert work product, even if such materials contain confidential material.

19 The confidentiality obligations imposed by this agreement shall remain in effect
20 until a designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: March 21, 2019

3 MACMILLAN, SCHOLZ & MARKS, P.C.
4 Attorneys for Philadelphia Indemnity
Insurance Company

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12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production
14 of any documents in this proceeding shall not, for the purposes of this proceeding or any
15 other federal or state proceeding, constitute a waiver by the producing party of any
16 privilege applicable to those documents, including the attorney-client privilege, attorney
17 work-product protection, or any other privilege or protection recognized by law.

18 DATED this 21st day of March 2019.

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21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
23

1
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under
6 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
7 Order that was issued by the United States District Court for the Western District of
8 Washington on _____ in the case of *Philadelphia Indemnity Insurance Company v.*
9 *Hewlett-Packard Company*, Case No. 2:19-cv-00138-RSM. I agree to comply with and to
10 be bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment in
12 the nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Western District of Washington for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after termination
of this action.

17
18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____
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